

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

MIGUEL SALINAS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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**Civil No. L – 05 - 56
Criminal No. L – 03 - 282**

OPINION

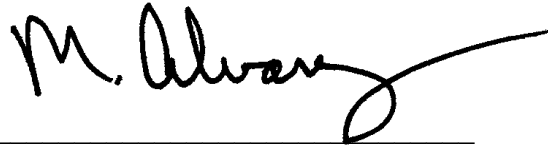
Petitioner has filed a §2255 motion attacking his 2003 conviction for possession of a firearm by a convicted felon. Petitioner was sentenced on July 30 2003. The very next day, Petitioner filed a Notice of Appeal. On April 21, 2004, the Fifth Circuit issued an opinion affirming the judgment of this Court. Petitioner filed a *writ of certiorari* with the United States Supreme Court that was denied on June 21, 2004.

Petitioner in his instant motion contends that his counsel was ineffective at the trial level and on direct appeal when he failed to object to the Court's use of the Sentencing Guidelines. Petitioner relies on the Supreme Court decisions in *Blakely v Washington*, 124 S. Ct 2531 (2004), *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *United States v. Booker*, 125 S. Ct 738 (2005) for this contention. Petitioner's invocation of *Blakely* is without merit as that opinion dealt with the State of Washington's guidelines and not the federal guidelines. Petitioner's invocation of *Apprendi* and *Booker*, 125 S. Ct 738 (2005) is also without merit. Petitioner's sentence became final more than a year ago. *Booker* was

issued on January 12, 2005 and it is not retroactive. *In re Elwood*, 408 F.3d 211 (5th Cir. 2005). Accordingly, *Booker* does not afford any relief to this Petitioner.

Petitioner's motion is without merit and is hereby DIMISSSED.

Done this 11 day of August, 2005 in Laredo, Texas.

A handwritten signature in black ink, appearing to read 'M. Alvarez', with a long, sweeping horizontal stroke extending to the right.

Micaela Alvarez
UNITED STATES DISTRICT JUDGE

TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT.